1: Evans-Pritchard E-5 (1931, 1936) 1940
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684 836 happens that a man impregnates an unmarried girl and he is then expected to marry her. The girl's kinsmen may raid his kraal and seize some of his cattle, but he will try to circumvent this by hiding his beasts in the kraals of relatives and neighbours. If later he marries the girl the cattle her kinsmen have seized count as part of the bride-wealth, and if he refuses to marry her they count as payment for possession of the child, so that in either case he pays no indemnity but only a fee to establish his rights. Here again, in point of fact, it is very difficult for the girl's brothers to seize the man's cattle, unless he is willing to let them do so, and there is always the risk of a fight which may become [835] general. One does not fornicate with the girls of one's own village, for they are generally related to one, so that when an issue of the kind arises it is generally between persons of different villages of the same district. If the young man can avoid being hit over the head with a club at the time of the incident and keeps clear of the girl's village for a few months he is not likely to pay an indemnity or to suffer any other consequences. If he has put the girl in child he will, in normal circumstances, send a kinsman to say that he intends to marry her. The girl is then regarded as engaged and the young man becomes son-in-law to her parents and one does not injure one's son-in-law. Even if he refuses to marry their sister, the brothers hesitate to attack the father of her child.

683 It is possible to obtain from Nuer a list of compensations for injuries to the person: e.g. ten cattle for a broken leg or skull, ten cattle for the loss of an eye, two cattle for a girl's broken teeth, &c. For a flesh wound, however serious, there is no compensation unless the man dies. In different parts of Nuerland the number of cattle to be paid in compensation varies. I have not recorded any instance of a man receiving such compensation, except from a Government court, but Nuer say that he would receive it if his kinsmen were strong enough to retaliate.

754 627 It is alleged that, in the old days, if a man died of magic his kinsmen would try to slay the magician (*gwan wal*), though I have not recorded a case of a magician having been killed. Nuer point out that a magician does not use his magic against persons in his own community but only against persons of other villages, so that it is not easy to revenge yourself on him since he will be supported by his village who regard powerful magic as of value to their community. It is also said that in the old days a witch (*peth*) was sometimes slain, though I cannot say how often, if at all, this occurred.

583 627 Many disputes arise about bride-wealth: the husband's people do not pay what they have promised or there is a divorce and the

8:Howell E, G-5 (1942-1944)1954
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PART II HURT

1. INTRODUCTION

683 NUER demand compensation in cattle for injuries sustained in all forms of affray and individual fighting. Certain definite injuries are recognized in traditional law, and for these there are scales of compensation. There are also notable exceptions. For example, while elaborate scales of compensation in cattle exist for fracture of individual bones of the hand and for different fingers, there is no traditional compensation for a broken skull.[1]

The compensation is intended not only to appease the feelings of the injured party, but also to restore the balance between the conflicting groups. It seems that the fundamental principle involved is that an injury should be met by compensation in direct ratio to its severity, and the severity is assessed by the extent of a man's disability. Disability is judged by the extent to which a man is incapacitated from co-operating in the communal activities of defence and the maintenance of his immediate family and the whole group to which he belongs. It is a collective concern as well as one of individual redress. Fracture of the bones of the hand or the fingers may amount to a very serious injury if the man is unable to hold a spear in defence of his kin or to assist in the cultivation of his fields. In the case of a broken skull, the victim either dies—in which case a feud probably follows or bloodwealth must be paid in full—or he makes a complete recovery.

683 682 A second principle inherent in the payment of compensation for personal injury less than death is directly related to the law of homicide. It is that in payment of compensation in cattle the culprit insures himself, in the event of his victim dying at some later date, against the possibility of the deceased's kinsmen attributing death to that wound. This association of ideas has close connexion with the law of *nyindiet*. If cattle have been handed over as compensation for the injury at the time, it is unlikely that a claim for *thung nyindiet* could or would be pressed, for in theory the cattle have increased to a number equivalent to or more than the number normally demanded for *nyindiet*. In this respect it is also significant that most claims for *thung nyindiet* refer

[1] Although there is no traditional compensation, a Nuer court will nowadays sometimes award a cow or two to the injured party.

8:Howell E, G-5 (1942-1944)1954
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back to wounds inflicted on the head of the deceased, particularly a broken skull.

As in the case of homicide, the existence of traditional scales of compensation for personal injuries does not indicate either a high exactitude of application or the inevitable and prompt settlement of disputes. In the past settlement depended largely on the relationship of the disputants. The principal inducement for payment was fear of retaliation, and in the case of a wound or a blow retaliation was likely to take a more personal and individual form than in the case of homicide. The injured party was on the look-out to avenge himself on the person of the offender. Generally speaking, too, the smaller and more integrated the community to which the disputants belonged, the more likely was it that pressure would be exerted to have the matter settled by payment of cattle and thus remove the danger of further friction within the group. The smaller the group, the greater was this pressure and the greater, too, the opportunity to exact personal revenge on the body of the culprit. Nowadays, injuries are assessed by the court and compensation is awarded with due regard for these traditional scales.

2. INJURIES RECOGNIZED IN NUER LAW

There are many specific injuries recognized in Nuer customary law as demanding compensation in cattle. Most of these injuries are fractures of bones, but it is usually on the subsequent effects of the injury —the stiffening of joints or paralysis causing permanent disablement— that the extent of the compensation is judged. Specific injuries recognized are given in the table (p. 70). Scales of compensation were extremely variable throughout Nuerland, but fairly consistent within one tribe. Elders can usually quote the rates current in the past. As in the case of most indemnities among the Nuer, I think that the rates were essentially idealized and therefore only a basis upon which a suitable compromise could be reached. This principle still operates in Nuer courts today, although there is an increasing tendency to quote past precedents established in case law. An attempt was made in 1945 to stabilize the scales, and the results are also recorded in the table, though it was appreciated that any rigid rule at this stage might be unwise. It is worth noting that theoretically total blindness is tantamount to death among the Nuer, and that loss of both eyes should demand full bloodwealth. At the Nuer Chiefs' meeting where these scales were discussed it was said that a man who loses his sight is 'like one who is dead', and the main object of the indemnity was to provide him with a wife, as in homicide. It was agreed, however, that in modern conditions ten head of cattle should be sufficient.

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SCALES OF COMPENSATION FOR BODILY INJURIES, 1945

Injury	*Head of cattle*	*Sexes*
tul juath peta (Fracture of the forearm: either *ulna* or *radius*)	2	1 cc+1 bc
(Fracture of both)	4	2 cc+2 bc
tul ciel (Fracture of the elbow)	2	1 cc+1 bc
(when the injury results in permanent disablement)	6[1]	5 cc+1 bc
tul woka (Fracture of the upper arm: *humerus*)	6	5 cc+1 bc
tul thak mual (Fracture of the kneecap: *patella*)	2	1 cc+1 bc
(when the injury results in permanent disablement)	6[1]	5 cc+1 bc
tul gham (Fracture of the thighbone: *femur*)	6	5 cc+1 bc
tul peta (Fracture of the collar-bone)	2	1 cc+1 bc
tul yed pek metot (Fracture of the little finger)	1	1 cc
tul yed pek medit (Fracture of the thumb or big toe)	1	1 cc
tul yed (Fracture of the bones of the hand)	(not specified)	
tul joak (Fracture of or permanent injury to the shoulder)	6	5 cc+1 bc
tem ral coke (cutting of the tendons of the heel or wrist)	2	1 cc+1 bc
(if permanent disability results)	4[1]	3 cc+1 bc
ghar liec nyal (knocking out a girl's teeth)	2 to 4	
mut wang (loss of an eye)	5	4 C +1 B
mut nyin dang rew (loss of both eyes)	10	8 C +2 B

C=Cow. B=Bull. cc=cow-calf. bc=bull-calf.

3. DEFAMATION OF CHARACTER

Defamation of character is a recognized wrong in Nuer law, and is usually associated with false accusation of witchcraft, though sometimes of such offences as adultery. The Nuer expression is *lorjok* (*teke lorjok*). Here the slandered person is likely to suffer a loss of status and privilege and run the risk of destruction at the hands of his fellows. In the case of false accusation of adultery, he runs the risk of retaliation by the husband. Hence, particularly in the latter instance, there is danger of breach of the peace in which opposed kinship groups will be involved, and the offence calls for some form of compensation. Nuer say that cases of this sort were frequent in the past, compensation being made by payment of one cow (*yang lorjok*), and cases are occasionally brought before the courts today.

[1] The distinction depends on the results of the injury—which applies to all injuries, but is here specified.

8:Howell E, G-5 (1942-1944)1954
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as a sorcerer or witch in normal circumstances. Similarly, other categories of magicians and spirit-owners are generally expected to act in the interests of their clients, although in some cases the client may, by paying a fee, gain the assistance of one of them to work witchcraft against his private enemy. Some spirit-owners have an unsavoury reputation in Nuerland. There are, however, persons whose activities are considered entirely anti-social, and who thus fall into the category of witches, whatever the circumstances.

Witchcraft

Apart from *gwan wal* or owners of medicines who have acquired an evil reputation, witches are possessors of the evil eye, called *peth* in Nuer, who are believed to cause harm and even death to those who cross their path in anger, and sometimes without any motive at all other than the inherent evil of their personalities. The *rodh* or ghoul is also a kind of witch who is particularly associated with the performance of hideous rites upon the bodies of the newly dead, thereby gaining some control over the souls of their surviving relatives.[1]

In the common action of the community against witchcraft we find perhaps the only conception among the Nuer which even approaches the notion of criminal or public law. Nuer say that in the past witches of these kinds were often killed with at least the tacit consent of the whole community to which they belonged. There are, however, no authenticated cases on record. The *rodh* might be killed with impunity, provided that blood was not spilt and no injuries to his head were inflicted by his assailants. The *peth* might be killed without grave danger of retaliation and, if composition was demanded, only six head of cattle need be paid to the kinsmen. It is doubtful if anything was paid in such circumstances. Accusations of the evil eye are fairly common today, but I have no details of the possessors being killed in the past.

It is worth adding that among many primitive peoples unnatural offences and bestiality are treated as public delicts and punished by ostracism, exile, or even death. Such offences are conspicuous by their absence among the Nuer. During several years in Nuerland I only heard of one actual instance. This occurred in Gaawar country, where a headman of considerable standing admitted such an offence with a cow. This was regarded as a grave misfortune, though the reaction was one of pity for the culprit rather than indignation. It was held that both he and the cow would die. As an act of expiation he cut off one of his own fingers with a spear and, accompanied by sacrifice, this was considered an effective antidote. In the absence

[1] See Howell and B. A. Lewis, 'Nuer Ghouls, a Form of Witchcraft', *S.N.R.*, 1947.

8:Howell E, G-5 (1942-1944)1954
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of further evidence it is not possible to expand on this subject. Nuer simply say that a man who commits such an offence will surely die. The ritual sanctions must be very effective.

Actions against Witches Today

In all cases of accusations of witchcraft appearing before modern Nuer courts of which I have any record, the accused was submitted to searching examination and evidence of a sort was taken. The facts seemed hard to prove, but by reference to the character of the accused (anything in the nature of incessant ill-temper, shrewishness, and general unpopularity backed by definite instances of misfortune among the accusers), the members of the court usually came to a decision. The matter was not treated lightly, and it is a fact that the large majority of such cases were dismissed as frivolous, and in some instances the plaintiff was punished for false accusation (*lorjok*)[1]. Sentences of imprisonment were sometimes inflicted, in most instances on women who were suffering ill-treatment from their neighbours and would be better out of the way for a while. Imprisonment, an idea entirely alien to the Nuer, somehow acted as a form of expiation or purification, and I have noted that in nearly all cases the woman went back to live unmolested among her neighbours.

Oaths

In connexion with Nuer religious beliefs which have bearing on the study of law and the procedure of courts today, oaths must be mentioned. The ceremony is usually performed by the Leopard-Skin Chief, who is called in for this purpose. There are two common forms of oath, the first called *kweng*, *kwil*, or *kap tang* ('to hold the spear-shaft'), which is used in a variety of circumstances, while *math* (literally, 'to drink') is the form often employed in cases of unconfessed homicide. The taking of an oath is not an individual process carried out by one man alone. In the former ceremony both accuser and accused are expected to take part, and it amounts to something of an ordeal between them; in the latter, where there is no known accused, those suspected and all their kinsmen are expected to participate.

It should be noted that the use of such oaths, especially in court, is not encouraged by the Government. Moreover, although the participants are often willing enough, the onlookers are afraid for them and nearly always persuade them to take some other course. Nuer chiefs and court members frown on the practice for this reason and not only because they know that the procedure is not in keeping with Government policy.

[1] See p. 70.

8:Howell E, G-5 (1942-1944)1954
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681 621 because the groups concerned were too remotely connected, the likelihood of composition was small. In the first instance the indemnity was not paid, or was paid on a much reduced scale; in the second instance it was not paid at all. Again, analysis of the concepts which concern sexual congress of persons between whom such relations are forbidden shows that such offences are not treated as public delicts. [684] Adultery requires the payment of an indemnity in cattle, and we have noted that some of these cattle are regarded as direct compensation for an infringement of marital rights in the wife, while one in particular is an expiatory payment necessary to remove the pollution which results and to rectify any impairment of the husband's ritual status. There is no evidence of public law here. Even a breach of the laws of exogamy, which, among some African tribes, is followed by a reaction of moral indignation and organized action against the culprits, is not a public delict among the Nuer. Certainly no punitive action is taken against the guilty parties even though all their kindred are subjected to considerable spiritual danger. The sanction here is supernatural, and although the pollution caused by such an act may extend beyond the principals to persons who are related to them, penal sanctions are not applied. Moreover such offences are relative in gravity according to the proximity of relationship between the principals. Even in the most serious breach the contamination (*nueer*) may be removed by the performance of the prescribed ritual, which is considered effective and in which the Nuer have considerable confidence.

[685] We have also considered theft. Here, in the case of material possessions of a certain type, all of which had an exchange value in cattle, the Nuer tell us that damages could be claimed which appear much in excess of the current value. This certainly suggests a concept of punitive damages; but further analysis shows that compensation was directed again to the restoration of equilibrium. The disturbance had been considerable, not only because articles of this nature had a high intrinsic value owing to their scarcity and the difficulty in obtaining them, but also because their loss might cause severe economic hardship to the individual and to his family group, and perhaps to a wider circle of associates in the subsistence economy. It is doubtful, in the absence of any institutionalized body to enforce payment, whether compensation was ever paid on the high scales which the Nuer tell us are traditional but, whatever the circumstances, it is clear that theft was not considered a public delict.

681 621 683 The only form of procedure which might fall within the category of public law was the repressive action taken against witches and ghouls. Although the Nuer themselves say that this action was sometimes taken and, in quoting instances in their history, refer to individuals who have at least an established position in known genealogies,

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there is no documented evidence, and we are again approaching a subject which is a matter of conjecture. It may be presumed, however, that violence probably resulting in death was sometimes used against persons who had acquired such an evil reputation that their continued existence in the community became intolerable. Nuer tell us that in the case of ghouls (*rodh*) no indemnity would be demanded by the dead man's kinsmen, and only a much reduced indemnity in the case of possessors of the evil eye (*peth*), and sometimes magicians (usually *tiet*) who were alleged to have used their powers for strictly anti-social purposes. This does not necessarily suggest that anything in the nature of organized or concerted action was taken but that the act of revenge on the person of a witch by an individual, or a few individuals who supported him, was condoned by public opinion to such an extent that the kinsmen of the deceased dared not retaliate, or perhaps themselves condoned the act, considering themselves well rid of a dangerous factor within their own lineage. At any rate a blood-feud was unlikely to follow, and although vague statements of this kind must be substantiated by actual examples[1] before any definite conclusion may be drawn, we might be justified in saying that here at least is the germ of public law.

Trends and Changing Conditions: the Transformation of Custom into Law

We have seen in the introduction and throughout the descriptive passages of this book that among the Nuer there are recognized rules of conduct which find expression in the terms *cuong*, 'right', and *duer*, 'wrong'. These concern the relations of one Nuer with another and, since the individual cannot be considered in isolation, one group with another. The distinction between custom and law has also been mentioned. The term 'law' is sometimes used of all processes of social control, and by this definition any of the obligations, customary actions, and conventions inherent in the social system might be described as law. It is less confusing to adopt the hypothesis that the extent of the law is limited to social control which is maintained by organized legal sanctions and applied by some form of organized political mechanism. By this definition, the Nuer had no law, for, as we have already seen, there was in the past nothing in the nature of politically organized society. There were in a sense courts of arbitration dependent on the person of the Leopard-Skin Chief, but resort to this functionary only occurred if both parties were willing or found it expedient to do so, and there was certainly no means through which a judgement could be enforced even if it was given.

On this subject, Professor Evans-Pritchard has written:

[1] It is perhaps now too late to collect reliable evidence on this subject.

15: Butt E-4 (No date) 1952 FJ22 Nuer FJ22

tribes. The people in a district intermarry, conduct feuds, go raiding together, and so forth. 634

Nowhere in Nuerland do environmental conditions permit complete autonomy and exclusiveness of small village units. Pastoral pursuits and the needs determining transhumance cause concentrations of people and co-operation for half the year in dry-season camps, thus creating a wide inter-dependence which is lacking among the Anuak and many other tribal groups. 631

TRIBAL CHARACTERISTICS

Each tribe has a name, occupies a particular territory and owns and defends its own building sites, pastures and water supplies. Large rivers, or wide stretches of uninhabited country, generally divide adjacent sections of contiguous tribes, and these sections tend to move in different directions in the drought. Members of the same tribe have feelings of cohesion and fellowship with each other which do not extend to members of other tribes.(1) The age sets are organised tribally. 619

The tribe is the largest group of which the members habitually combine for raiding and for defensive measures. During the period of military unity, there is a truce to internal disputes. Inter-tribal fighting is fierce but is subject to certain conventions concerning women and children which do not extend to fighting between Nuer and Dinka or other neighbours. 619 721

Within a tribe compensation *(cut)* is paid for homicide. This is the invariable definition of tribal allegiance in every part of Nuerland.(2) Between tribesmen there is also *ruok* - compensation for torts other than homicide. If a man kills or injures a man of another tribe no breach of law is recognised; no obligation is felt to settle the dispute and there is no machinery to do so. 619 682 683

A tribe is a segmented structure in that it consists of a number of small divisions, each occupying a particular part of the tribal territory. There is opposition between these segments as well as a certain co-operation and cohesion. 619

Within each tribe there is a dominant clan and there is a close relationship between the lineage structure of this clan and the various territorial segments of the tribe. This is of the greatest importance for understanding Nuer structure and organisation.

Nuer tribes have no common organisation or central administration making for political unity in the generally accepted sense of the word. Yet adjacent tribes do form a political system and, in spite of inter-tribal opposition, will display a united opposition to different neighbouring groups.

(1) Evans-Pritchard, *The Nuer*, 1940, p.121.
(2) *Ibid.*